

April 18, 2016

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VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Dear Ms. Dortch:

Re: Notice of *Ex Parte* Meeting: WT Docket No. 08-7

Dear Ms. Dortch:

On April 14, 2016, Twilio Inc. (“Twilio”) conducted an ex parte meeting with Commission Staff in the above-referenced proceeding. Commission Staff attendees included the following: John B. Adams, Darryl Cooper, Pramesh Jobanputra, Michael Janson, Melissa Kinkel (by phone), Jennifer Salhus, David Siehl, Karen Sprung, Kristi Thompson, and Matt Warner. Jason Fischl of Remind101, Inc. (“Remind”), and Aaron Foss of Telephone Science Corp. (which provides the “Nomorobo” service) also attended, as did Emily Emery and Doug Gardner of Twilio. Adam Bowser and I attended as Twilio’s counsel from Arent Fox.

During the meeting, Twilio emphasized that the Commission’s Telephone Consumer Protection Act (“TCPA”) orders and rules comprehensively set forth the forms of consent required for all types of voice and text calls. Only text messages that violate the Commission’s TCPA constitute “spam” messages. Text messages that comply with the Commission’s TCPA framework are lawful messages, do not constitute “spam,” and should not be blocked, throttled, or otherwise limited by the mobile operators. As is undisputed in this docket, the wireless carriers’ blocking practices do not even consider consumer consent to receive a particular message when deciding when to block. Instead, the carriers rely on poor proxies for detecting “spam” with the end result being that millions upon millions of the messages caught in the wireless carriers’ filters are entirely legitimate traffic.

Despite the FCC’s comprehensive TCPA framework, mobile operators and the CTIA have taken it upon themselves to engage in massive, on-going blocking of lawful messaging traffic expressly consented to by wireless consumers. The Commission has never endorsed or permitted carrier blocking of lawful communications. As the Commission’s July 10, 2015 *TCPA Declaratory Ruling* makes clear, consumers may block calls, but carriers may not do so unilaterally. Rules and Regulations Implementing the Telephone Consumer Protection Act of

AFDOCS/13215330.1

1991, CG Docket No. 02-278, Declaratory Ruling and Order, 30 FCC Rcd. 7961, ¶¶ 152-63 (rel. Jul. 10, 2015) (“*TCPA Declaratory Ruling*”). Indeed, carriers and others may not block calls “at their own discretion without providing consumers any choice or, indeed, even awareness of the practice.” *Id.* ¶ 158. Yet that is exactly what is happening today to millions of lawful text messages. The Commission has repeatedly ruled that both voice and text communications constitute “calls” under the TCPA and the Commissions implementing rules. Thus, there is no reasonable interpretation of the *TCPA Declaratory Ruling* that could limit its anti-blocking provision to voice calls and not text calls.

The wireless carriers’ blocking of messages violates the plain language of the July 10 2015 *TCPA Declaratory Ruling* and harms the ubiquity and seamlessness of the nation’s telecommunications network. Remind presented numerous examples of unilateral carrier blocking of clearly TCPA compliant text messages that occurred just that morning (April 14). As Remind also noted, some wireless carriers do not even report when they block particular messages, such that there is no indication that blocking occurred. For example, Remind users often communicate school closing information or practice cancellation notices to parents. If these messages are blocked without notice, Remind and its users have no idea that they should be attempting to provide notice through other means. The result is that you have parents and their children attempting to make it to schools that are closed due to inclement weather or you have children waiting for hours for their parents to pick them up after practices that never happened. This is a public safety issue.¹ It is only a matter of time before uninhibited blocking of lawful messaging traffic is going to end terribly for someone.

Not only does this blocking present a risk to public safety across all messaging use cases, it does incredible damage to Remind’s mission of connecting students, their parents, and teachers to achieve better outcomes in our public schools, half of which use Remind’s services. Indeed, Commissioner Rosenworcel has recently brought attention to the Homework Gap facing roughly five million American households because of the lack of high-speed Internet access.² But the blocking that Remind users, some of whom have mobile phones but lack broadband, face on a daily basis presents an even more fundamental problem because parents are simply kept in the dark about their children’s upcoming assignments and tests. Moreover, this blocking not only harms students, parents and schools that rely on Remind’s services for communicating important school-related communications, it also harms Remind’s reputation. Undisclosed carrier blocking

¹ As Twilio has already highlighted in its Reply Comments in this docket, the wireless carriers are blocking messages attempting to coordinate emergency medical treatment and messages trying to provide medical care for seniors. See Reply Comments of Twilio Inc. at 4-5, available at <http://apps.fcc.gov/ecfs/document/view?id=60001389558>.

² See, e.g., <http://www.miamiherald.com/opinion/op-ed/article4300806.html>.
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calls into question the quality of Remind's service, and that of many, many businesses relying on lawful messaging to communicate with their customers.

The Commission should grant Twilio's petition and put a stop to the continuing harms caused by carrier messaging blocking, which is harming consumers and the development of the mobile economy. Attachment A hereto is a slide deck that guided Twilio's discussion. Attachment B is a small sample of the many thousands of Remind messages that carriers routinely block. Attachment C is a product description of an AT&T competing group messaging product offering that on its face demonstrates that AT&T's blocking practices discriminate in favor of its own offerings.

If you have any questions or need additional information, please contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "MHazzard", is positioned above the printed name.

Michael B. Hazzard

Attachments

Attachment A

TWILIO INC.



EX PARTE PRESENTATION; WT DOCKET NO. 08-7

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OVERVIEW

Carrier blocking harms consumers

No material facts are in dispute

The Commission's TCPA regulations define spam text messages

Carrier blocking harms innovation and the mobile economy

Carriers and others should be able to manage their networks reasonably

The Commission should grant Twilio's petition





CARRIER BLOCKING HARMS CONSUMERS

Text calling is the most ubiquitous form of communication today

Innovation is occurring in messaging at an incredible pace

- Alerts
- Group messaging
- Password authentication
- Ride hailing
- Gig economy employer and customer communications

Carriers routinely block lawful, TCPA-compliant text messages from/to valid NANP numbers

- Precludes consumers from receiving the “unlimited” messaging they are promised
- Consumers, application providers, and others not informed of blocking
- Carrier blocking opaque
- Harms the ubiquity and seamlessness of the PSTN, as well as innovative business





MESSAGE FILTERING VOLUME CONTINUES TO INCREASE

Over 100 million messages blocked since July 2015

- "Operational error?"

Wide Ranging Impact

- Over 3,000 Twilio customers had messages blocked

Disproportionate Distribution

- 2 Twilio customers had more than 1 million messages blocked
- 15 Twilio customers had at least 100,000 messages blocked
- 26 Twilio customers had at least 50,000 messages blocked
- 87 Twilio customers had at least 10,000 messages blocked

2016	Messages Filtered
January	6.2 million
February	13.0 million
March	11.6 million

BLOCKING IS DIRECTLY LIMITING THE EVOLUTION AND GROWTH OF THE MOBILE ECONOMY





NO MATERIAL FACTS ARE IN DISPUTE

Carrier NANP blocking practices discriminate in favor of the CTIA Common Short Code system and their competing services

- Messages blocked on NANP numbers flow through on CSCs
- CSC system materially more expensive than NANP messaging
- CSC system has less functionality than NANP messaging
- CSC system single largest source of CTIA revenue
- Carriers offering their own NANP-based texting services for landline numbers



NO MATERIAL FACTS ARE IN DISPUTE

Carrier filtering and blocking in conflict with FCC rulings like *GroupMe Declaratory Ruling* and TCPA Omnibus Order

- TCPA compliant messages are being blocked
- Carriers acting unilaterally and without consumer consent to read/block messages
- AT&T's 15 messages per minute policy
 - Certain to disrupt classroom, call center, employer, and emergency messages
 - Certain to discriminate in favor of AT&T's competing landline messaging product



TCPA REGULATIONS DEFINE SPAM TEXT MESSAGES

The Commission's TCPA regulations set forth a well-defined and accepted framework for classifying voice and text calls as unsolicited, "spam" calls

The consumer's perspective is key; as Chairman Wheeler recently noted regarding this proceeding, the task is:

“ensuring that **consumers** receive the text messages **they** want while protecting **consumers** from **unwanted** messages” (emphasis added)





TCPA REGULATIONS DEFINE SPAM TEXT MESSAGES

That is the exact purpose of the Commission's TCPA framework, which empowers consumers to:

- Provide and revoke consent (e.g., "STOP")
- Pursue class action litigation, a major deterrent and behavior modifier
- Adopt and implement technology for consumer-initiated blocking/filtering

Regulatory enforcement exists as well:

- FCC investigative and forfeiture authority
- FTC investigative, forfeiture, and litigation authority





TCPA REGULATIONS DEFINE SPAM TEXT MESSAGES

Nomorobo

- Allows consumers to block pre-recorded voice, “robocalls”
- Consumers have blocked over 76,000,000 robocalls using Nomorobo
- Winner of FTC Robocall Challenge
- Supported by FCC regulations

National Do Not Call List

Cellphone Database

Consumers, not carriers, should control the flow of calls they want to receive or block

SMS needs to be brought into the Commission’s long-standing framework





CARRIER BLOCKING HARMS INNOVATION AND THE MOBILE ECONOMY

Case study on health care appointment reminders

Cost of no-shows to American healthcare system = \$150 billion annually

- Multi-channel Twilio SMS and voice appointment reminder solution implemented in a single hospital resulted in 2% increase, or 8,000 additional appointments, kept each year and significant time and money saved
- Applied to all 5,627 registered US hospitals = additional 45 million kept appointments nationwide
- Economic benefit of this single use case \$100 million per year
- Filtered appointments of similar use case = 466,000 in March 2016 alone



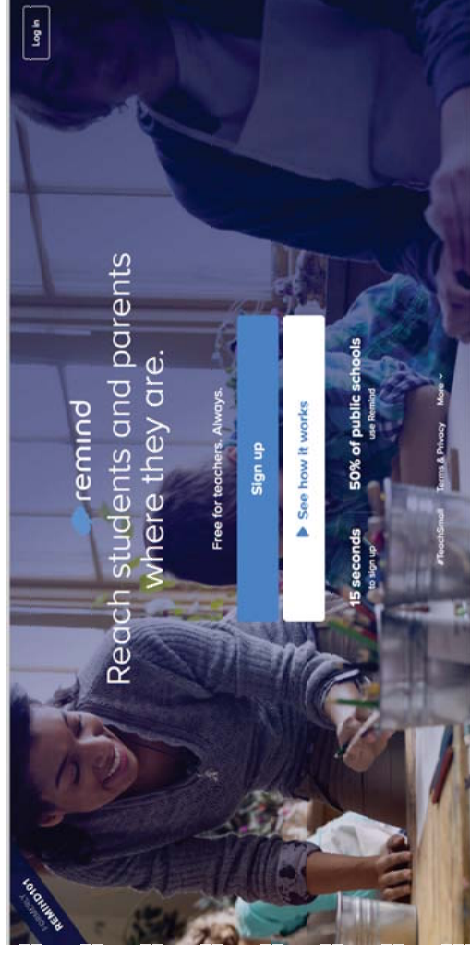


CARRIER BLOCKING HARMS INNOVATION AND THE MOBILE ECONOMY

The record is replete with undisputed evidence that carrier blocking is harming innovative service offerings and the mobile economy

Remind (formerly Remind101)

- Empowers easy group communication among teachers, students, parents and guardians
- 35 million teachers, students, and parents





CARRIER BLOCKING HARMS INNOVATION AND THE MOBILE ECONOMY

Carrier blocking and the broken CTIA system limits innovation and economic growth daily

Cybersecurity – the US is falling behind

- SMS-based password authentication among the best methods to prevent hacking
- Authentication messages routinely blocked by carriers

Internet of Things – the US is falling behind

- SMS-based communication is fundamental to interconnected devices
- Consumer-to-device messages routinely blocked by carriers

Chatbots – the US is falling behind

- SMS-based communication fundamental to market development
- Widely recognized as the next generation of applications
- Cannot work on an interconnected basis today



CARRIERS AND OTHERS CAN REASONABLY MANAGE THEIR NETWORKS

The Commission has repeatedly emphasized that carriers can take action to reasonably manage their networks

Bringing messaging affirmatively under the Commission's well-understood Title II framework would promote positive network management practices and protect consumers

- **Cooperation** and **coordination** among all providers
- Enable the ability to suspend and investigate sources of unsolicited messaging
- Prohibit blocking of messages that consumers want to send and receive
- Protect consumers and enable the networks and industry to evolve in a healthy way

Protect networks and emphasize the **ubiquity** and **seamlessness** of the nation's communications infrastructure





THE COMMISSION SHOULD GRANT TWILIO'S PETITION

SMS messaging is the most prevalent form of communication/calling today; it should be brought **affirmatively** into the Commission's regulatory framework

SMS messages utilize NANP numbers, the key hallmark of the PSTN

The Commission has found that SMS messages are "calls" under the TCPA, Section 227 of the Communications Act

Section 227 of the Act is codified under Title II; the D.C. Circuit has made clear that if a service is Title II for one purpose, it's Title II for all purposes

The Commission has ample authority to "forbear" from any Title II provisions that do not need to apply to SMS messaging





Thanks!

PRESENTED BY DOUG GARDNER | DGARDNER@TWILIO.COM



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Attachment B

Sample of Blocked Messages:

You've joined 5th Period Geo! Reply to send a message to M. Ibrahim. Get the app to see the 2 messages you missed: rmd.me

Gr9vocal: Men's and Women's ensemble have regular rehearsal today after school - Reply to message your teacher

Grade 10 vocal: Men's and Women's ensemble have regular rehearsal today after school - Sent via Remind.com

741 Elgin: Cadets remember to polish your boots!!! Call or text if your are unable to attend - Sent via Remind.com

Mrs. Gee -grade tw: We started a practice test in math today. Please finish it for homework. - Reply to message your teacher

Concert Band: Full band sectional after school! Everyone involved in UIL needs to be there! See you at 3:15! - Sent via Remind.com

7/8 S Homeroom: - Tomorrow is the Pita Pit order deadline. - April 29th is the yearbook order deadline. :) - Sent via Remind.com

Grade 10 Band: Tomorrow afternoon you must be on the bus at 2:00pm at Princess doors with music, instrument and wearing your uniform.

Unicef Club LOHS: Meeting in Room 222 in just a few minutes!!! Exciting things coming your way! See you there! - Reply to message your teacher

TGG3M2016: Please return back to class now. Class ends in 5 min. Thank you! - Reply to message your teacher

Mrs. Platers FDK -: Tomorrow is the White Elephant Sale! Bring your money to buy some used toys! Nothing is more than \$5 but most items are under a toonie. - Sent via Remind.com

Class of 2016: All students who have purchased commencement tickets will be able to pick them up in the rotunda at lunch on April 14, 18-22. Bring ID

You've joined Band Retirement! Reply to send a message to Patrick. Get the app to see the 1 message you missed: rmd.me

St. Joe's Grade 8C: Get language test signed - Sent via Remind.com

Sears Fest: I have a bin full of props from Lockdown that need a home. Come claim your stuff before it gets tossed - Reply to message your teacher

Breanna Haskins: Hey Beth, we are working on our EBP research and have a question about whether or not reviews of other studies would be appropriate for our research articles?

You've joined Class of 2018 One Act (Eastern)! Reply to send a message to Stage Manager. Get the app: rmd.me/a

Torrie/Way 2015-16: Leave it to the kindergartens to find the pile of dirt to play in. <http://rmd.me/jq2P0> - Reply to message your teacher

GLC205: Please bring in permission forms for Student Success conference. Submit them to Mr. Laurin in student services. - Sent via Remind.com

PSPS ELK B: Who let the chickens out?!?! :) <http://rmd.me/jq4rh> - Sent via Remind.com

Oakridge: Bring in batteries for recycling for the May 2 pick up. We will still collect after this day but would like to send off as much as we can.

Interactf: Don't forget the Sunrise Rotary scholarship is due Friday! ☀️ - Reply to message your teacher

Midget Colts 2016: 5:30-6:00 defense film Offense arrive in enough time to be ready & on the field by 6:15 6:15-8:15 practice All gear goes home tonight!

EY Carter: Please check the blog for new photos of our Colasanti's. We also have a request on our main page. - Reply to message your teacher

Lappalainen Homero: Grade 7's...please return your "trades on tour" field trip permission form. There is no cost associated with the trip. Thank you

Eco Team of Oakrid: IMPORTANT: Bake sale is off. Admin couldn't give us the green light. Any other fundraising ideas? - Reply to message your teacher

Mrs. Mumby' Grade : Ask your child about multiplying! We have started looking at the 0, 1, 2, and 3 X tables. We are learning different strategies to multiply.

Grade 8: lets try with the attachment this time :) <http://rmd.me/jqduD> - Reply to message your teacher

1516: Grade 8 grad photos retakes are tomorrow. The class birthday party is Tuesday April 19. - Reply to message your teacher

Attachment C



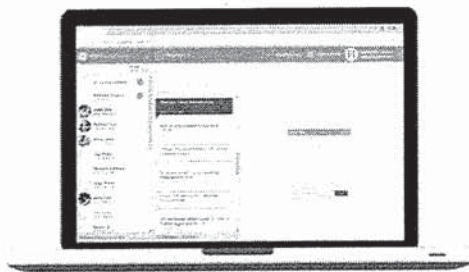
Product Brief

AT&T Landline Texting

Texting with your Customers from your Business Landline

How much time does your business spend on the phone? From answering calls to listening to voice mail messages, it can add up to a significant amount of time. Your customers may not want to wait in queues or get voicemail. Often, they would rather text you – just like they do everyone else in their life. Now you can let them.

With AT&T Landline Texting you can send and receive texts using your existing landline or toll-free number. Customers text you on your business number and you can respond back. Or, you can start a new conversation.



How it Works

AT&T Landline Texting is simple to use. AT&T enables your existing business number to send and receive texts. Use a web browser or an

app on your device to read your messages, send a response, or to send new messages. Your customers simply send and receive texts on their mobile phones as they do today. No new equipment is required, and you can stay with your current landline or toll-free service provider.

Once set up, you can manage your contacts list and depending on the package purchased, take advantage of various productivity tools such as creating groups, adding a customized signature to your messages, or setting up an auto reply.

Reaching Customers

Studies show that consumer use of texting is very high, and that 91% of consumers prefer receiving a text message over a voicemail from a business.¹

In a world where voice calls and email are less capable of cutting through, businesses have an opportunity to reach customers with the simplicity and urgency of texting.

When creating your text messaging program, you will want to consider applicable opt-in and other legal/regulatory requirements. You should seek appropriate guidance from your legal advisor.

Potential Benefits

- Increased responsiveness to customers
- Greater productivity
- Leverage an existing asset
- Be mobile

Features

- AT&T Landline Texting gives your customers the freedom to communicate by text
- Customers text the number they already know – your EXISTING business number
- Receive texts to your landline or toll-free number on mobile devices and respond from virtually anywhere

①



A mobile user sends a text to your landline number

②



Read your messages using a web browser or an app

③



Respond to the text or create a new message

Industry Solutions

AT&T Landline Texting can improve communications in most industries with customer facing roles. Following are some examples.

Customer Use Cases

Car dealership

The service department of a car dealership experiences high call volume and is missing calls. Calling customers back is not only time consuming but risks a further round of phone tag. With AT&T Landline Texting, many of the service department's customers prefer to simply text in their query allowing the dealership to send quick, prompt, and succinct responses. The solution reduces calls, saves time and allows the service department to focus on getting customers on their way.

Realty office

A realty office wishing to minimize no-shows calls prospective buyers before their appointments to reconfirm attendance, but notices that they often do not pick up the calls. The realty office moves to AT&T Landline Texting to send appointment reminders and requests return text confirmations. Benefits include time savings from not making calls, more efficient rescheduling and prospective buyer convenience. The buyers especially like the ability to text back their response or to just click on the realty office's phone number in the text when circumstances require human interaction.

Staffing

A staffing agency needs to match hiring managers with temp staff quickly and efficiently. The process of contacting candidates for jobs can involve time consuming voice calls and voicemails. AT&T Landline Texting enables the agency to text their talent pool and receive prompt responses. Recruiters like the immediacy of text messaging and appreciate not having to divulge their personal mobile number to receive a text.

Supported Features

Browser or App Access

The service can be accessed using a browser, desktop apps and mobile apps. Desktop

Industries That May Improve Communication Using AT&T Landline Texting

When implementing your text messaging program, you will want to consider relevant opt-in requirements and you should seek appropriate guidance from your legal advisor.

	Verticals	Use Case
Agents and Dealers	Car Dealerships	Sales efforts, service department, scheduling appointments
	Insurance Agents	Sales efforts, responsive relationship
	Realtors	Sales efforts, responsive relationship, scheduling appointments
Retail	Retail Stores	General Q&A, administrative
	Online Retailers	Receipts, delivery confirmations, general Q&A
	Salons/Spas – hair/nail/spa	Scheduling appointments, reminders, administrative
	Restaurants	Reservations and reminders, general Q&A
Licensed Professionals	Attorneys	Scheduling appointments, general Q&A
	Veterinarians	Scheduling, appointment reminders, updates on pet health
Services	Staffing companies	Swift communication with job applicants and managers
	Transportation – taxi/limo/trucking	Text for a cab or limo, dispatching, updates
	Contractors – AC/electrical/plumbers/etc.	Scheduling appointments, time changes, updates, Q&A
	Education – nursery/daycare/k-12/college	Alerts, notifications, general communication and updates

apps² are supported for Windows and Apple. Mobile apps are supported for Android and iOS³ based tablets and smartphones.

Devices

Depending on the package purchased, two or more devices can be logged in simultaneously.

Messages

Text messages can be sent and received with all packages. Only the Premium package allows sending of MMS messages.

Customizable Signature

A short, personal message can be added to each outbound text message.

Auto Reply

An automated text message can be sent to anyone who texts into an account. The auto

reply feature can be set for specified hours of the day/day of the week.

Scheduled Texting

A text message can be set to send to one recipient, multiple recipients, or a group at a specific date and time.

Group Texting

A named group of up to 50 contacts can be created. Text messages sent to named groups will go out as a blind carbon copy. Recipients will not be able to see what other recipients received or replied to the message.

Keywords

Users can choose a specific word for customers to text into their business number. Once someone texts in the keyword, they will receive an automated response with a link, call-to-action, specific information, etc.

Additional Users

Additional Users may be added to the Premium package at a cost. Users may have Admin or Operator features. Operators may send and receive text messages, but do not have access to Admin features.

Inbound Forward

The Premium Package includes Inbound Forward, which allows inbound messages to be forwarded to a URL you select for subsequent management.

API Access

Customers may also build their own interface or integrate into their existing platform using our API solution. For more information about the AT&T Landline Texting API please visit www.att.com/landline-texting.

Solution & Pricing Chart

	Basic	Standard	Premium
Price	\$10/month	\$25/month	\$100/month
Included Messages	100 texts ¹	Unlimited texts	Unlimited Texts/MMS
Included Users	1	1	1 (Optional Add'l Users ²)
Device logins included	2	Unlimited	Unlimited
Maximum Messages/Minute	3	3	20
Contact Import		Y	Y
Customizable Signature		Y	Y
Auto Reply Messages		1	Unlimited
Scheduled Texting			Y
Group Texting			Y
Keywords			5
User Management			Y
Inbound Forward			Y

Optional Charges

The Basic package includes an allowance of 100 messages (sent or received) per month. Use of more than 100 messages in any month will automatically incur an additional fee of \$15 allowing unlimited messages to be sent/received for the remainder of that month.

¹Premium allows Additional Users to be added to the service at \$25/user/month. (It is not possible to add Additional Users to Basic or Standard packages.)

For more information contact an AT&T Representative or visit www.att.com/landline-texting.

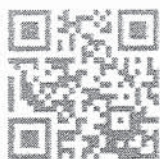
Share this with
your peers on



LinkedIn



Twitter



Scan this code
to learn more.

To learn more about AT&T Landline Texting visit
www.att.com/landline-texting or [have us contact you](#).

¹Source: Harris Poll – The High Demand for Customer Service Via Text Message, August, 2014

²Available soon after launch.

³Pew Research, U.S. Smartphone Use in 2015, April, 2015.

Important Information

Emergency Notification – AT&T Landline Texting must not be used as the primary or sole method of sending Messages that contain information that is essential to the protection of life or property. First responders should not rely on AT&T Landline Texting for such situations; in such situations AT&T Landline Texting may be more susceptible to blocking, outages, delays and congestion, and greater risk of non-delivery.

General – AT&T Landline Texting is available to Customers with a qualified AT&T business or government agreement ("Enterprise Agreement") and a Billing Account Number ("BAN") and an associated cellular telephone number ("CTN"). AT&T Landline Texting may not be available for purchase in all sales channels or in all areas. Some landline or toll-free telephone numbers may be ineligible for use with AT&T Landline Texting. AT&T Landline Texting Customers must have the right to use a valid landline or toll free telephone number that has been issued by an authorized numbering provider. Customers' right to use proposed numbers is verified before they may use AT&T Landline Texting, and Customers may be requested to provide certain information in order to enable AT&T or its suppliers to perform such verification. For Users who access AT&T Landline Texting using the software application, coverage is not available in all areas. AT&T wireless coverage maps are available at www.wireless.att.com/coverageviewer. Wireless service is subject to transmission limitations and terrain, system, capacity and other limitations. Availability, security, speed, timeliness, accuracy and reliability of service are not guaranteed by AT&T. When users are outside of the coverage area, access will be limited to information and applications previously downloaded to or resident on their device. For devices and service from other wireless carriers, all technical support, voice, messaging and data usage will be subject to the applicable rates and terms of such other wireless carrier(s). Refer to the applicable wireless carrier for such rates, terms and conditions.

Messages – Customer is solely responsible for the content of all Messages Customer transmits using AT&T Landline Texting. AT&T does not itself verify the content of Messages sent by